

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(GREENBELT DIVISION)

ENTERED

NOV 05 2002

U.S. BANKRUPTCY COURT
DISTRICT OF MARYLAND
GREENBELT

In re:

Mattress Discounters Corporation and
T.J.B., Inc.,

Debtors.

Chapter 11

Case No. 02-22330 DK

(Jointly Administered)

**ORDER AUTHORIZING THE EMPLOYMENT AND COMPENSATION
OF PROFESSIONALS UTILIZED IN THE ORDINARY COURSE OF BUSINESS**

Upon the Emergency Motion of the Debtors for Order Authorizing the Employment and Compensation of Professionals Utilized in the Ordinary Course of Business (the "Motion")¹ and the Affidavit of Stephen Newton in Support of First-Day Motions and Applications; this Court having considered the Motion and being fully advised; it appearing that appropriate notice and opportunity for a hearing on the Motion was given and that no further notice need be given; it appearing that the relief requested in the Motion is appropriate in the context of these cases and necessary to ensure that the Debtors' business will be preserved; it appearing that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, stockholders and other parties in interest; and good cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion be and hereby is granted.
2. Subject to the limitations set forth below, the Debtors are authorized, but not required, pursuant to Sections 327 and 105(a) of the Bankruptcy Code, to retain and employ the professionals utilized in the ordinary course of the Debtors' business (the "Ordinary Course

¹ All capitalized terms used in this Order shall have the definitions attributed to them in the Motion unless otherwise indicated.

Professionals”), including but not limited to, the professionals identified on Exhibit A attached hereto, to provide services on terms substantially similar to those in effect prior to the Petition Date, without the need to file individual retention or fee applications or obtain retention orders. The Ordinary Course Professionals may also continue to employ other professionals as part of the services being provided to the Debtors without the need to file individual retention applications for each such professional or to disclose such retention on Exhibit A or any supplemental lists.

3. The Debtors may supplement the list of Ordinary Course Professionals contained on Exhibit A from time to time as necessary by filing supplemental lists with this Court and serving such lists upon (i) the United States Trustee, (ii) any statutory committee appointed in these Chapter 11 cases and (iii) counsel for the Debtors’ prepetition secured Lenders, Simpson Thacher & Bartlett (Attention: Katherine A. McLenden, fax: 212-455-2502), and (iv) parties that have filed a request for copies of all pleadings pursuant to Fed. R. Bankr. P. 2002 at least fifteen (15) days prior to the date such list is filed with the Court (collectively, the “Interested Parties”). Any objections to any list shall be made in writing, filed with this Court and served on counsel to the Debtors and the United States Trustee. If no objections are filed to a supplemental list within ten (10) days after service thereof, then retention of the Ordinary Course Professionals contained on the list shall be deemed approved by this Court without the necessity of a hearing or entry of a further order by this Court.

4. The inclusion on Exhibit A or any supplemental list of a person who is not an Ordinary Course Professional as described in this Order will not operate to render such person an Ordinary Course Professional for purposes of this Order. “Ordinary Course Professionals,” for

purposes of this Order, specifically exclude service providers who would not be required to be retained under Sections 327(a) or 327(e) of the Bankruptcy Code.

5. Each Ordinary Course Professional shall file with the Court a retention statement, in substantially the form attached hereto as Exhibit B (a "Retention Statement"), and serve copies thereof by first-class mail, postage prepaid, on the Debtors and the Interested Parties within thirty (30) days after the date of the order approving this motion.

6. At any point, the Office of the United States Trustee may notify the Debtors in writing that the Trustee does not believe a particular Ordinary Course Professional should remain eligible to be treated as an Ordinary Course Professional (such an individual shall hereinafter be referred to as a "Former Ordinary Course Professional"). Such notice shall trigger a requirement that the Former Ordinary Course Professional file an application to be employed pursuant to § 327. Any such application filed by a Former Ordinary Course Professional shall, for all purposes, be nunc pro tunc to the Petition Date or the date the Former Ordinary Course Professional was first employed by the Debtors, whichever is later.

7. Any Committee or the Debtors' prepetition Secured Lenders may file a motion seeking the Court's determination that a particular Ordinary Course Professional should be required to file an application to be employed pursuant to § 327 and be considered a Former Ordinary Course Professional.

8. Except as provided for above with respect to the Office of the United States Trustee, the Debtors' prepetition Secured Lenders, and any Committee, if any creditor or party in interest wishes to object to the retention of any Ordinary Course Professional, such entity must file an objection with this Court not later than ten (10) days after the filing and service of the Retention Statement by the relevant Ordinary Course Professional. If, after a hearing regarding

the retention of a disputed Ordinary Course Professional, such disputed party is not retained by the Debtors, the disputed party may still apply to this Court, pursuant to Sections 330 and 331 of the Bankruptcy Code, for compensation for all postpetition work performed on behalf of the Debtors through the date of the Court's decision.

9. The Debtors are authorized, but not required, to pay, without the need to file a formal fee application with the Court, 100% of the fees and expenses of each Ordinary Course Professional for services rendered during the pendency of these Chapter 11 cases in accordance with the following procedures:

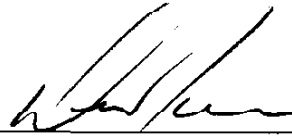
- a. Each Ordinary Course Professional shall submit an invoice setting forth in reasonable detail the nature of the services rendered and any corresponding charges and expenses.
- b. Subject to the right of the Debtors to dispute the invoice of the Ordinary Course Professional, to the extent the fees and expenses of an Ordinary Course Professional do not exceed an average of \$15,000 per month during the pendency of these cases, the Debtors will pay such amounts in the ordinary course of business.
- c. Monthly allowances for fees and expenses of Ordinary Course Professionals will be applied on a "cumulative basis." To the extent that any professional's fees and disbursements are in any month less than the Monthly Cap, as defined below, the Debtors propose that the unused portion of the Monthly Cap be available as compensation and reimbursement of such professional during subsequent months. The Monthly Cap for the month in which the Petition Date falls shall be \$15,000, prorated for the number of days in such month after the Petition Date, and the

Monthly Cap for each subsequent month shall be \$15,000 plus any unused portion of the Monthly Cap for prior months. Conversely, to the extent that any professional's fees and disbursements exceed the Monthly Cap in any month, the excess charges may be added to the fees and disbursements for the following month and paid to the extent of availability under the Monthly Cap.

- d. Notwithstanding the foregoing, in no event will the Debtors pay any Ordinary Course Professional more than \$25,000 in any given month. This \$25,000 limit, however, shall not prohibit the remaining balance due to the Ordinary Course Professional from being added to the fees and disbursements for the following month or from unused allowances from being rolled into subsequent months.
 - e. In the event that requests for compensation and reimbursement to an Ordinary Course Professional exceed the limits set forth herein, all the fees and expenses of such professional in excess of such limits shall be subject to prior approval of the Court in accordance with Sections 330 and 331 of the Bankruptcy Code, applicable rules and orders of the Court.
 - f. The Debtors will not make any payment to any Ordinary Course Professional who has failed to file a Retention Statement (defined below).
10. This Order shall not apply to any professionals retained by the Debtors pursuant to a separate order of this Court, unless such separate order specifically so provides.

11. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: November 5, 2002



UNITED STATES BANKRUPTCY JUDGE

cc:

Mattress Discounters Corporation

T.J.B., Inc.

Hale and Dorr LLP

Arent Fox Kintner Plotkin & Kahn, PLLC

U.S. Trustee

Service List